IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4042 OF 1999

Mrudulaben B. Patil & Anr. ...Applicants
V/s.
The State of Maharashtra & Anr. ...Respondents

Mr.S.V. Marwadi for Applicants.
Ms.R.M. Gadhavi, APP for State.

CORAM : V.M. KANADE, J.

DATED : JANUARY 18, 2006

P.C. :-

. Heard learned Counsel for the applicants. None appears for respondent no.2 though they are served.

. The applicants are challenging the order of issuance of process by the Metropolitan Magistrate, 7th Court, Bhoiwada, Dadar, Bombay, for a complaint which is filed by respondent no.2 under Section 138 of the Negotiable Instruments Act.

2. It is submitted by the learned Counsel appearing on behalf of the applicants that the applicant no.1 is a wife and applicant no.2 is a son of accused no.2 Bharat A. Patel who is a Chairman and Managing Director of accused no.1 company and therefore, they are not

concerned with the day and day management of the said company. It is submitted that there is no averment made in the complaint and though allegation is made in the complaint alleging that the applicants are concerned with the day to day management of the company, this fact has not been controverted by the respondents and though they are served, neither the respondents nor their Advocate have appeared before the Court when the matter was called out. A law on the point is quite well settled. It has been held by the Supreme Court that if no averment is made in the complaint that the applicants are involved in the day to day management of the company, the process which is issued against them is liable to be quashed.

3. In the result, the Criminal Application is allowed. The process issued against the present applicants is quashed. The trial Court, however, is directed to proceed and decide the complaint against the remaining accused, as expeditiously as possible, and in any event, within a period of six months.

. The Application is allowed in the above terms.

(V.M. KANADE, J.)